



## STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board  
Pete T. Cenarrusa, Secretary of State  
Alan G. Lance, Attorney General  
Keith Johnson, Acting State Controller  
Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

### Final Minutes Regular Land Board Meeting November 12, 2002

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, November 12, 2002 in Boise, Idaho. The meeting began at 1:10 p.m. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa  
Honorable Acting State Controller Keith Johnson  
Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Winston A Wiggins

Attorney General Alan Lance was absent from this meeting.

#### • **CONSENT AGENDA**

**Director Wiggins provided background information on the Consent Agenda items.**

**A motion was made by Acting State Controller Johnson to approve the Consent Agenda in its entirety. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote.**

#### **1. Director's Report – approved**

- A. Interest Rate on Department Transactions – October 2002
- B. Bureau of Surface and Mineral Resources, Minerals Section, Official Transactions – September 2002
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – October 2002
- D. Bureau of Real Estate, Easement Section, Official Transactions – October 2002
- E. Bureau of Surface and Mineral Resources, Range Management and Surface Leasing Section, Official Transactions – October 2002
- F. Timber Sale Official Transactions – October 2002
- G. Timber Sale Activity Report
- H. Fire Report (*Final Report for the Season*)

#### **2. Timber Sales – Staffed by Bob Helmer, Chief, Bureau of Forest Management – approved**

A. Waters Meadows	CR-1-0324	1,650 MBF
B. Bear Creek Timber Sale	CR-3-0491	2,400 MBF
C. Old Dent Road	CR-4-0714	4,575 MBF
D. South Dick's Ridge	CR-4-0760	2,645 MBF
E. The Plains	CR-4-4001	2,700 MBF
F. Trail Creek Thinning	CR-6-0157	2,200 MBF

**3. Endowment Fund Performance Report – Staffed by Bob Maynard, PERSI – approved**

**4. Request for Approval to Enter into a Conceptual Exchange Agreement with Evergreen II Partnership – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – approved**

*DEPARTMENT RECOMMENDATION:* That the board conceptually approve this exchange proposal and direct the department to proceed with the survey and appraisal.

*BOARD ACTION:* Approved.

**5. Request for Conceptual Approval to Offer a 19.95-Acre Parcel of Abandoned Railroad Right-of-Way Lying in Latah County For Sale – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – approved**

*DEPARTMENT RECOMMENDATION:* That the board conceptually approve this proposed land sale and direct the department to proceed with the appraisal.

*BOARD ACTION:* Approved.

**6. Request for Final Approval to Complete a Land Exchange Between the State of Idaho and Patriot Investments, LLC – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – approved**

*DEPARTMENT RECOMMENDATION:* That the board direct the department to complete the exchange.

*BOARD ACTION:* Approved.

**7. Application for Dredge/Placer Permit No. 322, Emerald Creek Garnet, Ltd. – Staffed by Scott Nichols, Chief, Bureau of Surface and Resource Management – approved**

*DEPARTMENT RECOMMENDATION:* That the board approve issuance of the permit subject to adherence to the plan submitted in the application, submission of the required bond and compliance with the Rules and Regulations Governing Dredge and Placer Mining Operations in Idaho.

*BOARD ACTION:* Approved.

**8. Minutes – approved**

A. Regular Land Board Meeting – October 8, 2002

**• REGULAR AGENDA**

**9. Federal Lands Task Force Update – Presented by Robert Maynard, Perkins Coie, LLP**

Robert Maynard, Perkins Coie, LLP, provided a PowerPoint presentation for the board.

*DISCUSSION:* Governor Kempthorne asked Mr. Maynard if he had any sense of the probability of the bill's passage and if any national organizations will oppose the bill because of the precedent it establishes. Mr. Maynard stated he is optimistic about passage of the bill. A lot of ground work has been done and dialogue is ongoing. The bill is structured to engender

bi-partisan support. Some national groups may, on general principle, oppose the bill, but Mr. Maynard believes there is an opportunity to work with those groups.

Governor Kempthorne asked Mr. Maynard if he has good empirical data that can compare state land and how it is currently being managed versus federal land to show that there is an advantage to state management. Mr. Maynard stated he believes he does. One excellent resource has been the Policy Analysis Group reports from the University of Idaho.

Controller Johnson asked about expectations the board should have with the timing of bringing a project to completion. The Task Force was set up about six years ago. Our forests are in a situation where time is of the essence. He asked Mr. Maynard for his assessment of the timing of bringing these projects to fruition. Mr. Maynard stated this is an arduous process. Everyone has to be realistic in their expectations of getting something started on the ground and in how long it has taken to get to this stage.

Secretary of State Cenarrusa asked if the National Forest system has been a part of this process. Mr. Maynard stated the Forest Service has made constructive contributions. However, the agency is naturally cautious in their official position. Secretary of State Cenarrusa asked if it is possible that the National Forest system may veto any of the projects. Mr. Maynard stated he does not foresee a veto on the current legislation.

No action taken on this agenda item.

**10. Review and Consideration of the Hearing Officer's Recommended Order and Adoption of Final Order – Weimer – Presented by Steve Schuster, Deputy Attorney General, IDL**

*DEPARTMENT RECOMMENDATION:* That the board adopt the Hearing Officer's *Recommended Order* as the *Final Order*. In short, the department recommends that the board: (1) deny Claimant Weimer's request that the board recognize an unconditional easement for access to his property under R.S. 2477 or under Idaho Code § 40-107 and § 40-204A; and (2) deny Claimant Weimer's request that the Land Board recognize an unconditional easement for access to his property under the doctrine of implied easement.

*DISCUSSION:* Mr. Steve Schuster, Deputy Attorney General, Department of Lands, provided background information for the board.

AUDIENCE WITH THE BOARD
-------------------------

Lane and Athena Weimer were granted an audience with the board. A verbatim transcript is available upon request.

*DISCUSSION:* Governor Kempthorne began the discussion by asking Mr. Weimer if he felt the Hearing Officer handled the process in a professional manner. He asked if all material presented to the Hearing Officer was reviewed. Mr. Weimer responded absolutely not.

Governor Kempthorne remarked that Attorney General Lance previously asked Mr. Weimer to provide a copy of his title insurance record. He asked if Mr. Weimer was able to fulfill that request. Mr. Weimer responded that he did not do a title search when he purchased the property. Titles originated when the property was homesteaded and copies of paperwork to support those titles was available for review.

Governor Kempthorne asked Bob McKnight, Supervisor, Idaho Department of Lands, Clearwater Area Office, if Mr. Weimer owned the property prior to the road closure. Mr. McKnight responded that Mr. Weimer's right-of-way occurred in September of 1992. Mr. Weimer was not a landowner, but he was given right-of-way access to the property. At that time Mr. and Mrs. Weimer were

notified of a pending road closure through verbal discussions in the Clearwater Area Office and through the terms of his right-of-way.

Governor Kempthorne asked about RS 2477 applicability. Director Wiggins referred the RS 2477 question to Mr. Schuster. Mr. Schuster stated that the Hearing Officer did not rule on whether there was an RS 2477 established because of issues concerning the location of the road.

Secretary of State Cenarrusa asked if there is any mechanism that would allow the Weimers access to their property. Director Wiggins responded that the Weimers currently have access over state land by permit. Mrs. Weimer asserted that the permit does not guarantee access. Governor Kempthorne asked if the department's intention is to allow the Weimers access into perpetuity. Director Wiggins stated that should the state ever dispose of the land, the Weimers could lose their right-of-way. However, typically the department works with landowners to give them an opportunity to acquire a more permanent right-of-way prior to disposition of the property. Director Wiggins indicated there is not a great likelihood that this property will be sold because of its timber value.

Superintendent Howard stated concern that the board was entering into discussions not having bearing on the topic before them. Governor Kempthorne concurred and recommended that the board make a ruling on the Hearing Officer's report. Mrs. Weimer stated that, in her opinion, the Hearing Officer's report is incomplete. Mr. Weimer requested that the board reject the Hearing Officer's report. Governor Kempthorne commented that he does not feel he is in a position to reject the Hearing Officer's report. However, the report will be held to allow Director Wiggins to work with the Weimers on language regarding property access.

**BOARD ACTION:** A motion was made by Acting State Controller Johnson to defer the adoption of the Hearing Officer's *Recommended Order* indefinitely with the recommendation that the department work with the Weimers to arrive at a reasonable solution. Superintendent Howard seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote.

#### **11. Elk Valley Subdivision – Final Approval of Agreement – Presented by Jay Biladeau, Assistant Director, Lands, Minerals, Range**

**DEPARTMENT RECOMMENDATION:** That the board approve the agreement between the state and Mickelsen.

**DISCUSSION:** Governor Kempthorne asked if this is the first time this situation has occurred. Mr. Biladeau stated to his knowledge, yes. Governor Kempthorne asked what precedent will be set by this agreement. Mr. Biladeau stated the only precedent is that the state is willing to sit down and work with the parties. If it is possible to put something together that benefits both sides, the state is willing to proceed.

**BOARD ACTION:** A motion was made by Acting State Controller Johnson to accept the department's recommendation. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote.

#### **• INFORMATION AGENDA**

**Director Wiggins briefed the board on the Information Agenda item. No Land Board action is required on the Information Agenda.**

#### **12. Spirit Lake Update**

**DISCUSSION ITEM NOT ON THE AGENDA**

- **Disposition of the 1951 Heat Plant Stacks located at the Old Penitentiary Historic District**

**DISCUSSION:** Ms. Judith Ouderkirk of the Idaho Botanical Garden and Mr. Steve Guerber of the Idaho Historical Society discussed the disposition of the Heat Plant stacks. The Idaho Historical Society agreed to stabilize the stacks in the near future. The Heat Plant building will remain intact for the time being. The Idaho Botanical Garden and the Idaho Historical Society will continue discussions regarding the future disposition of the building and the stacks.

**BOARD ACTION:** No action was taken.

At 3:15 p.m., a motion was made by Secretary of State Cenarrusa to resolve into Executive Session. Acting State Controller Johnson seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote.

- **EXECUTIVE SESSION**

**A. To Consider Personnel Matters [Idaho Code § 67-2345(1)(a)]**

At 4:25 p.m., a motion was made by Acting State Controller Johnson to resolve into Regular Session. Superintendent Howard seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote. No actions were taken by the board during the Executive Session.

There being no further business to come before the board, the meeting adjourned at 4:25 p.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne

President, State Board of Land Commissioners and  
Governor of the State of Idaho

/s/ Pete T. Cenarrusa

Pete T. Cenarrusa  
Secretary of State

/s/ Winston A Wiggins

Winston A Wiggins  
Director

*The above-listed final minutes were approved by the State Board of Land Commissioners at the December 10, 2002 regular Land Board meeting.*